

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

Mary Jo Ingram

Social Security No.:

xxx-xx-7767

Address:

4 Donnelly Ct., Durham, NC 27713-

Case No. 10-82206- -

Chapter 13

Debtor

OBJECTION TO CLAIM

NOW COMES the Debtor above-named, through counsel, who respectfully objects to the proof of claim #3 filed by the alleged creditor PYOD, L.L.C., (hereinafter referred to as "PYOD") and dated May 20, 2011, for the following reasons:

1. The Proof of Claim filed by PYOD, does not, in contravention of Federal Bankruptcy Rule 3001(c), include a copy of the writing upon which is based or a statement of the circumstances under which such writing was lost or destroyed.
2. Accordingly, pursuant to In re Andrews, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008), this claim should not be considered presumptively valid.
3. Further, pursuant to In re Forrest, Case No. 06-01967-8-RDD (Bankr. E.D.N.C. May 22, 2009) and Unifund CCR Partners v Dover, 681 S.E.2d 565, 2009 WL 2180672 (N.C.App. July 21, 2009) the Proof of Claim does not satisfy the requirements for an account stated, namely that the Proof of Claim does not include an "itemization of credit extended to cover individual transactions." Id.
4. Further, the Proof of Claim contains no verification that either PYOD or Joyce Montjoy, who prepared this Proof of Claim and is, based upon the Proof of Claim, the Bankruptcy Manager for Resurgent Capital Services, is "in any way connected to the establishment or maintenance of the alleged credit card account..." Id.
5. Lastly, as this Proof of Claim was filed after October 1, 2009, it is, pursuant to 11 U.S.C. § 502(b), subject to the requirements of N.C.G.S. § 58-70-115(5).
6. This requires that PYOD which is, upon information and belief and pursuant to N.C.G.S. § 58-70-15(b)(4), a 'debt buyer', provide "reasonable verification" of the amount allegedly owed by the Debtors, with "reasonable verification" being defined to "include documentation of the name of the original creditor, the name and address of the debtor as appearing on the original creditors's records, the original consumer account number, a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of the amount claimed to be owed, including all fees and charges."

7. It is conceded that the Proof of Claim contains the name of the original creditor.
8. The Proof of Claim does not, however, include:
 - a. The name and address of the debtor as appearing on the original creditor's records;
 - b. A copy of the contract or other document evidencing the consumer debt; or
 - c. An itemized accounting of the amount claimed to be owed, including all fees and charges.

As such, not only should the claim of PYOD be disallowed, but it could be found in violation of the Consumer Economic Protection Act of 2009 and subject to actual damages, including attorneys' fees, and civil penalties of not less than \$500.00 and not more than \$4,000.00. The Debtor is not currently seeking such an award, but do not waive their right to do so should PYOD contest this Objection.

WHEREFORE, the Debtor prays that the Court enter an Order disallowing the claim in its entirety.

Dated: July 22, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz

Edward Boltz
North Carolina State Bar No.: 23003
1738-Da Hillandale Rd.
Durham NC 27705
(919) 847-9750

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

Mary Jo Ingram

Social Security No.:

xxx-xx-7767

Address:

4 Donnelly Ct., Durham, NC 27713-

Case No. 10-82206- -

Chapter 13

Debtor

CERTIFICATE OF SERVICE

I, Renee Nolte, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on July 22, 2011. I served copies of the foregoing **NOTICE OF OBJECTION** and **OBJECTION TO CLAIM** by certified mail, return receipt requested addressed to the following parties:

PYOD L.L.C.

C/o Resurgent Capital Services

Attn: Managing Agent

Post Office Box 19008

Greenville SC 29602

and by automatic electronic noticing upon the following Trustee:

Richard M. Hutson, II

CHAPTER 13 TRUSTEE

/s Renee Nolte

Renee Nolte